



Appeal Decision

Site visit made on 30 January 2024

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 February 2024

Appeal Ref: APP/P0119/C/23/3333856

6 Sycamore Drive, Patchway, Bristol BS34 5DH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Winston Sam against an enforcement notice issued by South Gloucestershire Council.
 - The notice was issued on 2 November 2023.
 - The breach of planning control as alleged in the notice is without planning permission, [the] erection of fencing.
 - The requirements of the notice are: 1. Demolish all fencing and support posts to the front of the dwelling and remove the materials from the property. 2. Return the land to its previous state prior to the erection of the fencing.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.
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Decision

1. The appeal is allowed on ground (f) and it is directed that the enforcement notice be varied by in paragraph 5 ("what you are required to do") after step 2, inserting the following steps: *"Alternatively: 3. Modify the fence by repositioning it at the front and by reducing its height to no more than 1.2 metres above ground level, in accordance with the terms, including conditions and limitations, of the planning permission reference P23/03070/HH dated 8 January 2024. 4. Remove any excess materials arising following the modification of the fence from the property."* Subject to this variation the enforcement notice is upheld.

Ground (f) appeal

2. The ground of appeal is that the requirements of the enforcement notice exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
3. The appeal property contains a modern detached two-storey dwelling. The property is located on a planned residential estate, where the dwellings are generally set back from public pathways behind open front gardens and vehicular access is at the rear. The notice attacks a close-boarded timber fence erected to enclose the front garden. The fence is about 1.8 m in height above ground level.
4. An enforcement notice can have the purpose of remedying the breach, including by restoring the land to its condition before the breach took place, or

its purpose can be to remedy any injury to amenity which has been caused by the breach. The notice clearly states that its purpose is to remedy the breach. By requiring no less than total removal of the fence, including its supporting posts and materials, along with returning the property to its former state, the purpose of the notice would be achieved as the property would be restored to its condition before the breach took place. As a result, in that context alone the notice requirements would not be excessive.

5. Be that as it may, it is also possible to remedy a breach of planning control by making development comply with the terms, including conditions and limitations, of any planning permission granted in respect of the land. Since submission of the appeal the Council have granted planning permission for a 1.2 m high fence at the front of the property¹. This permission represents a realistic 'fallback' position (i.e., the likely outcome in the event the notice is upheld). It makes little sense to insist on the fence being totally removed if the appellant can simply re-erect it in accordance with the permission shortly afterwards. The enforcement procedure is not punitive but remedial. Reducing the fence to 1.2 m high along with repositioning it adjacent to the front boundary to accord with the permission would resolve the planning difficulties at less cost and disruption compared with total removal of the fence. Moreover, the effect of the Act at s180 (1)(b) is that where, as in this instance, planning permission has been granted for a part of the development in an enforcement notice, the notice ceases to have effect so far as it is inconsistent with that permission.
6. Consequently, I shall exercise the powers in s176 (1)(b) of the Act to vary the notice so that the appellant can comply with the permission as an alternative to total removal of the fence. Such a requirement would be sufficiently clear, there being no doubt as to what the appellant must do to comply with the notice. The purpose of the notice would still be achieved, as the breach would be remedied. There would be no injustice to the appellant, as they would still have to comply with the notice within the specified period in any event.

Conclusion

7. For the reasons given above I conclude that the requirements are excessive and I am varying the enforcement notice accordingly, prior to upholding it. The appeal on ground (f) succeeds to that extent.

Stephen Hawkins

INSPECTOR

¹ Council Ref: P23/3070/HH.